IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 16930 OF 2007

Dated : September 3, 2007

Between:

The Government of Andhra Pradesh,
Rep. By its Secretary,
Irrigation & CAD(Ser.VI.2) Department,
Secretariat, Hyderabad and others

Petitioners

AND

R.V. Gopala Ratnam and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 16930 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records

relating to the order dated 10.04.2007 passed in O.A. No. 4115 of 2006 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, to quash the same, the petitioners filed this writ petition.

The first respondent herein filed the above O.A. before the Tribunal assailing GO Ms. No. 46 dated 02.06.2006 issued by the first petitioner herein, whereby the entire pension of the petitioner was withheld, without issuing any show cause notice to the petitioner, as illegal, arbitrary and in violation of Article 14 of Constitution of India and contrary to Rule 52 of the Andhra Pradesh Revised Pension Rules, 1980.

Few facts, that are necessary for disposal of this writ petition, are that the first respondent while working as Executive Engineer was trapped by the Anti-Corruption Bureau sleuths in the year 1990 and a criminal case in CC No. 23 of 1992 came to be registered. The first respondent was tried for the offence under Sec.7 and 13(2) read with Sec. 13(1)(b) of the Prevention of Corruption Act, 1991. He was found guilty and convicted by the Special Judge for SPE & ACB Cases, Vijayawada and was accordingly sentenced by his judgment dated 05.08.2005. Before the pronouncement of judgment, the first respondent retired from service in the year 1996 and the respondents paid him provisional pension. While so, the first respondent issued GO Ms. No. 46 dated 2.6.2006

withholding entire pension and other retirement benefits, in view of the conviction and sentence imposed for the above offences in CC No. 23 of 1992. The 1st respondent, subsequently filed Criminal Appeal No.1387 of 2005 before this Court, wherein the sentence imposed on him was suspended by order dated 14.9.2005. Feeling aggrieved by withholding of the pension as ordained by GO Ms. No. 46 dated 2.6.2006, the first respondent herein filed the above O.A.

The petitioners herein submitted before the Tribunal that in view Rule 25 of the A.P.C.S.(CCA) Rules, the disciplinary authority is justified in withholding the pension and other retirement benefits. It is further submitted that Rule 52 of the A.P. (Revised) Pension Rules, 1980, is applicable only in the event of pendency of criminal or judicial proceedings, but since the criminal proceedings against the 1st respondent have culminated into conviction and sentence, the employee cannot take shelter under the said Rule.

The Tribunal, after elaborately considering the issue, allowed the O.A. holding that the impugned order is contrary to Rule 9 of the A.P. Revised Pension Rules. Hence, the writ petition.

Learned Government Pleader for Services – II contended that in view of involvement of the 1st

respondent – employee in an offence under Prevention of Corruption Act and his conviction and sentence thereunder, the Government is empowered to withhold pension and other retirement benefits. He further contends that since the 1st respondent was convicted and sentenced, for his involvement in a criminal case, the petitioners need not consult the A.P. Public Service Commission, as mandated by Rule 9 of the A.P. Revised Pension Rules.

The learned counsel for the first respondent herein contended that the impugned GO issued by the first petitioner is contrary to Rule 52 of the A.P. (Revised) Pension Rules, 1980 apart from being in violation of Rule 9, inasmuch as neither an opportunity was given to him nor the A.P. Public Service Commission was consulted before passing the impugned final orders. It is further contended that the sentence imposed on the first respondent employee was suspended by this court and, therefore, Rule 52 (1)(b) empowers the petitioners to pay provisional pension to him.

Before delving on the respective contentions of the parties, it is apt to refer to Rule 52 of the AP (REVISED) PENSION RULES, 1980, which reads:

> **Provisional pension where departmental or judicial proceedings may be pending:**
>
> (1) (a) In respect of a Government Servant referred to in

sub-Rule(4) of Rule 9, the Audit Officer of office shall pay the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension;

(b) The provisional pension shall be paid by the Audit Office /Head of Office during the period commencing from the date of retirement to the date on which, upon the conclusion of department or judicial proceedings, final orders are passed by the competent authority

Provided that ……..

Provided further that …….

(2) Payment of provisional pension made under Sub-Rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period

Evidently, as contended by the learned counsel for the first respondent, Rule 52 (1)(b) empowers the petitioners for payment of provisional pension during the period commencing from the date of retirement to the date on which, upon the conclusion of department or judicial proceedings, final orders are passed by the competent authority and Rule 52(2) lays down that such payment of provisional pension made under Sub-Rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such

proceedings, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period. Thus a reading of Rule 52 (1)(b) with Rule 52(2), makes it abundantly clear that the first respondent is entitled to provisional pension. The submission of the learned Government Pleader appearing for the petitioners that the first respondent shall be liable to refund the payment of provisional pension, cannot be accepted at this juncture, inasmuch as it is a matter to be agitated at an appropriate time. However, we make it clear that such payment shall be as per Rule 52(b) of A.P (Revised) Pension Rules, 1980, subject to the result of the Criminal Appeal No. 1387 of 2005 pending before this Court.

With the above observations, the Writ Petition is disposed of. No order as to costs.

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T.MEENA KUMARI, J.

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G.CHANDRAIAH, J.

September 3, 2007
MAS